

ATTACHMENT 2  
FAR 15.403-1(B) EXCEPTIONS TO COST OR PRICING DATA REQUIREMENTS

*The following discussion is provided as general guidance only. Contracting officers (COs) should check the most current regulations (the FAR and all supplements) to find the most current details on the exceptions to cost or pricing data requirements. Portions of the following discussion are taken, almost verbatim from the FAR and its supplements. These portions will be shown in normal font. Additional comments will also be included and will be shown in italics. Section titles and FAR (and supplemental) references will be shown in bold font.*

**FAR 15.402** states that COs must purchase supplies and services at fair and reasonable prices. COs must analyze (or have someone else, a contract specialist or pricer, analyze) all offered prices to ensure that the resulting contract price is fair and reasonable. This analyst will typically require some sort of data to perform the required analysis. **FAR 15.402(a)(1) and (2)** provides an order of preference for the types of information to be used in a price/cost analysis. **FAR 15.402(a)(3)** indicates that COs should use every means available to ascertain whether a fair and reasonable price can be determined before requesting cost or pricing data.

The Truth in Negotiations Act (TINA), however, requires that cost or pricing data be obtained on award of a negotiated contract, or modification (to a sealed bid or negotiated contract) expected to be over \$550,000 (the TINA threshold). **FAR 15.403-4** states that the CO "must obtain cost or pricing data only if the CO concludes that none of the exceptions in **15.403-1(b)** applies."

**FAR 15.403-1(b)** enumerates the four exceptions and **FAR 15.4031(c)** provide the standards to use for each of these exceptions. These exceptions, and the related standards, are discussed in the following paragraphs:

1. **Adequate Price Competition (APC)** - The CO must determine that prices agreed upon are based on adequate price competition or APC. APC exists if *NOTE: There are three different scenarios, shown below as (i), (ii), and (iii), that may constitute APC. Each of these is a stand-alone scenario; in other words, you do not need to have two or more scenarios to have APC*

- (i) two or more responsible offerors, competing independently, submit priced offers and if
    - (A) Award will be made to the offer with the best value where price is a substantial factor in source selection; and
    - (B) There is no finding that the price of the otherwise successful offeror is unreasonable.

*2 or more  
neg. competition*

**NOTE:** Both (A) & (B) must be true for this to apply. If the CO decides that the price on of the otherwise successful offeror is unreasonable, the CO must support this finding by a statement of facts. This finding must then be approved at a level above the CO (this

2002-10-A



approval level has not been further defined by any of the FAR or supplements). Once this approval has been granted, this exception cannot apply. If none of the other exceptions apply and you cannot justify requesting a waiver (described later in this document), you must request cost or pricing data from the offeror.

(ii) There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers, even though only one offer is received and if—

(A) Based on the offer received, the CO can reasonably conclude that the offer was submitted with the expectation of competition, e.g., circumstances indicate that —

(1) The offeror believed that at least one other offeror was capable of submitting a meaningful offer; and

(2) The offeror had no reason to believe that other potential offerors did not intend to submit an offer.

(B) The CO must prepare a D&F stating that the price is based on APC and that the price is reasonable. This D&F must be approved at a level above the CO.

**DFARS 215.403-1(c)(1)(B)(ii)** states that the reasonableness of the prices awarded must be clearly established on the basis of price analysis. The various techniques of price analysis available for use are described at **FAR 15.404-1(h).** *NOTE: This portion of the FAR requires that the CO perform a price analysis to determine the price to be fair and reasonable. The expectation of APC and the determination of price reasonableness in this situation are two separate actions. All AFMC contracting activities have been directed to create a process to review one-offeror situations to determine if adequate information is available for a determination of price reasonableness. See <http://www.safac.hq.af.mil/contracting/toolkit/part15/price/APC.htm> for additional information on adequate price competition. As always, your price analysis should be documented in the contract file. **AFARS 5315.402(c)(1)(ii)(B)** requires that the approval of the required D&F be made by the Senior Center Contracting Official at all AFMC activities; or*

(iii) Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions,

economic conditions, quantities, or terms & conditions under contracts that resulted from APC. **NOTE:** *This section requires a prior buy where the price reasonableness was based on APC and requires the CO to adjust that prior price to reflect any potential differences between the two situations. This analysis needs to be documented in the contract file.*

2. **Prices set by law or regulation** – These prices normally take the form of pronouncements of periodic rulings, reviews, or similar actions of a governmental body, or are embodied in the laws. Your contract file must include documentation on the basis for the agreed to prices.
3. **Commercial Items** – Any acquisition for an item that meets the commercial item definition at FAR 2.101, or any modification, as defined in paragraph 3(I) or (ii) of that definition, that does not change the item to a noncommercial item, is exempt for the requirement for obtaining cost or pricing data. **NOTE:** *Just because an item is commercial, you cannot accept the offered price on the basis of that commerciality. You must still perform some form of price analysis to determine the reasonableness of the contract price as well as document your analysis and any related negotiations.*
4. **Waivers** – The head of the contracting activity (HCA) may, without power of delegation, waive the requirement for submission of cost or pricing data in exceptional cases. DFARS 215.403-1(c)(4) states that DoD has waived the submission of cost or pricing data for the Canadian Commercial Corporation and its subcontractors as well as for nonprofit organizations on cost-reimbursement-nc-fee contracts. AFFARS 5315.403-1(c)(4) provides some procedural guidance on submitting waivers.  
**NOTE:** *Additional information on TINA waivers is at [http://www.safaa.hq.af.mil/contracting/toolkit/part1/5/price/waiv\\_rev.htm](http://www.safaa.hq.af.mil/contracting/toolkit/part1/5/price/waiv_rev.htm)  
If none of the other exceptions apply, you must either obtain cost or pricing data, or request a waiver. All waiver requests must be submitted through HQ AFMC/PK.*

*Additional Information: The Pricing Advisory Tool (PAT) can assist contracting personnel in deciding if the exceptions apply and the types and quantity of data to request. It also contains additional information on TINA Waivers. The PAT is Excel spreadsheet-based and is available at <https://www.afmc-mil.wpafb.af.mil/HQ-AFMC/PK/pkp/pricing.htm>  
You must always document (1) your thought process when deciding if an exception applies, (2) the methodology used to determine price reasonableness, and (3) any negotiations you undertake to arrive at the contract price.*